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7 Attorneys for Plaintiff eBay Inc.

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9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN JOSE DIVISION**

12 EBAY INC.,

13 Plaintiff,

14 v.

15 DIGITAL POINT SOLUTIONS, INC.,  
SHAWN HOGAN, KESSLER'S  
16 FLYING CIRCUS, THUNDERWOOD  
HOLDINGS, INC., TODD DUNNING,  
DUNNING ENTERPRISE, INC., BRIAN  
17 DUNNING, BRIANDUNNING.COM,  
and DOES 1-20,

18 Defendants.  
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Case No. C 08-04052 JF PVT

**DECLARATION OF JEAN B.  
NIEHAUS IN SUPPORT OF EBAY  
INC.'S REPLY IN SUPPORT OF  
MOTION TO STRIKE THE  
ANSWER OF DEFENDANTS  
THUNDERWOOD HOLDINGS,  
INC., BRIANDUNNING.COM AND  
KESSLER'S FLYING CIRCUS**

Hearing Date: November 20, 2009  
Time: 9:00 a.m.  
Judge: Hon. Jeremy Fogel

1 I, Jean B. Niehaus, declare as follows:

2 1. I am a member of the Bar of the State of California and am associated with  
3 the law firm of O'Melveny & Myers LLP, counsel for eBay Inc. in this matter. I submit  
4 this Declaration in support of eBay's Reply in support of its Motion to Strike the Answer  
5 of Defendants Thunderwood Holdings, Inc., BrianDunning.com and Kessler's Flying  
6 Circus. I have personal knowledge of the facts set forth in this declaration and, if called to  
7 testify as a witness, could and would do so under oath.

8 2. Attached hereto as **Exhibit 1** is a true and correct copy of Kessler's Flying  
9 Circus's Responses to eBay's Requests for Admission, dated February 25, 2009.

10  
11 I declare under penalty of perjury under the laws of the United States and the State  
12 of California that the foregoing is true and correct. Signed on this 6th day of November,  
13 2009 in San Francisco, California.

14 /s/ Jean B. Niehaus

15 Jean B. Niehaus  
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